

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) BILLY D. “RUSTY” RHOADES III, an)
individual;)

(2) MEGAN L. SIMPSON, an individual;)
and)

(3) MICHAEL S. HARRELL, an individual,)

Plaintiffs,)

v.)

(1) THE STATE OF OKLAHOMA, *ex rel.*)
GOVERNOR KEVIN STITT;)

(2) THE STATE OF OKLAHOMA, *ex rel.*)
THE DEPARTMENT OF PUBLIC SAFETY;)

(3) KEVIN STITT, an individual;)

(4) CHIP KEATING, an individual;)

(5) JASON NELSON, an individual; and)

(6) JOE CLARO, an individual,)

Defendants.)

Case No. CIV-20-761-R

**JOINT MOTION TO STRIKE TRIAL SETTING
AND STAY CASE PENDING APPEAL**

The Parties jointly move the Court to strike the April 11, 2023 trial setting and stay this case pending resolution of Defendants’ appeal from the Court’s Orders denying Defendants’ summary judgment motions as to Plaintiff Harrell’s Due Process claim. The Parties submit the following brief in support of their motion:

1. On December 9, 2022, Defendant Kevin Stitt filed his Motion for Summary Judgment as to Plaintiff Harrell’s Due Process claim. Dkt. No. 50. That Stitt is entitled to qualified immunity was among the reasons that Stitt urged the Court to enter summary judgment in his favor.

2. On February 1, 2023, Defendant Keating and Defendant Nelson filed their Motion for Summary Judgment. With respect to Harrell's Due Process claim, Keating and Nelson adopted the arguments set forth in Stitt's summary judgment motion, including qualified immunity.

3. On March 30, 2021, the Court entered an Order denying Defendant Stitt's Motion for Summary Judgment. Dkt. No. 80. The Court found that "Defendant Stitt is not entitled to qualified immunity because it was clearly established at the time of Plaintiff Harrell's separation that he had a statutory right of reversion thereby creating a property right in his continued employment with the Oklahoma Highway Patrol." *Id.* at *13.

4. That same day, the Court entered an Order granting in part and denying in part Defendant Keating's and Defendant Nelson's Motion for Summary Judgment. Dkt. No. 81. The Court granted summary judgment for Keating and Nelson on Plaintiffs' tortious interference claim, but denied summary judgment as to Harrell's Due Process claim for the same reasons set forth in Dkt. No. 80.

5. The denial of a summary judgment motion based on qualified immunity is an immediately appealable final decision. *Mitchell v. Forsyth*, 472 U.S. 511, 527–30 (1985). Upon Defendants' filing of such an appeal, the Court is automatically divested of jurisdiction, absent a certification that the appeal is frivolous or forfeited. *Stewart v. Donges*, 915 F.2d 572, 579 (10th Cir. 1990).

6. On April 3, 2023, Defendants filed their Notice of Appeal with respect to the above-mentioned Orders.

7. For these reasons, and because Plaintiff Harrell's Due Process claim under 42 U.S.C. § 1983 is the sole remaining claim in this action, the trial setting on April 11 should be stricken and this case stayed pending resolution of Defendants' appeal.

CONCLUSION

For the foregoing reasons, the Parties urge the Court to strike the April 11 trial setting and stay the case, including all remaining deadlines, pending resolution of Defendants' appeal.

Respectfully submitted,

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